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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 674.

AUTOMOBILE TRANSPORTERS WELFARE FUND and WALTER F. CAREY, DENTON JOLLY, E. J. HAND, JAMES R. HOFFA, CHARLES E. BOND and WILLIAM R. WALSH, Trustees of AUTOMOBILE TRANSPORTERS WELFARE FUND,
Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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RESPONDENTS' ATTACK ON PETITIONERS' MOTIVE IN FILING THE PETITION IS ABSURD AND THEIR CHARACTERIZATION OF PETITIONERS' POSITION IN THE COURT BELOW ERRONEOUS

Respondents state:

> "[T]he only possible reason for the petition here is not the fear of any duplication in examination or in the requirement for reimbursement but actually to hobble effective regulation and supervision by anyone over the financial affairs of these funds." (Resp. Br., p. 7)

But Petitioners do not object to the audit conducted by New York State; they object to the charging of the cost

of the audit to the Fund. Therefore, a decision in Petitioners' favor would not deprive New York of the right to audit the Fund, but only of the right to charge it for the audit. Since it is inconceivable that requiring New York to pay its own way would deprive New York of its ability or desire to provide effective regulation and supervision of the Funds' financial affairs, Respondents' imputation of evil motive is absurd.

Not content with impugning Petitioners' motive, Respondents distort Petitioners' position before the New York Court of Appeals. This court can best judge Respondents' characterization (Resp. Br., pp. 7, 10) by reading the pertinent portion of Petitioners' brief below:

> "Thus, Congress has established the general rule that state law is inapplicable to agreements reached by collective bargaining . . .
>
> "However, since adequate legal supervision over the operations of welfare funds requires the application of principles of trust and insurance law Congress left open a small area in which states could supplement the federal policy of encouraging parties to bargain collectively over welfare benefits by providing beneficiaries additional protection that the assets of funds would be utilized for the purposes for which they were accumulated (1958 Welfare Disclosure Act). Even though state regulation is permitted for this limited purpose in this area, as in other areas which Congress 'designedly left open for state control,' state legislation which 'impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the Federal Act' is invalid. *Allen-Bradley Local 1 v. Board*, 315 U. S. 740, 750."
>
> (Petitioners' Brief, New York Court of Appeals, pp. 13-14.)

Two other statements of Respondents merit comment. On page 9, Respondents state, in italics:

"The expense of the audit is no more than the other expenses of the administration of these funds."

The Fund's administrative expenses enable it to provide protection for the covered employees who benefit from such expenses; the expense in paying for New York's audit relieves New York of this expense. The latter expense, then, unlike the former, does not redound to the benefit of the covered employee but to the benefit of the New York taxpayer.

On the same page, Respondents assert "that the Fund might be subjected to the expense of an audit by more than one state is fanciful." Respondents advance two reasons for this assertion: one, the Fund has not yet been subjected to multiple charges; and two, Section 37 k permits the Superintendent of Insurance to waive an audit of the Fund. The *possibility* of multiple charges is not, however, negated because such charges have not, as yet, been imposed. Nor does the existence of the Superintendent's discretion to waive an audit negate such a possibility. Respondents do not argue that the absence of this discretion would render Section 37 f unconstitutional. Under Respondents' analysis, then, other states—and New York—may charge the Fund without providing for such discretion.

More important in the light this discretionary power sheds upon the issue before the Court. "The question [of preemption] is one of Congressional intent." *Gass v. Utah Labor Relations Board*, 353 U. S. 1, 10. Clearly, state legislation empowering a local official, who acts on the basis of state not national considerations, to subject multi-employer, multi-state welfare funds to multiple charges can only impede the creation and growth of funds.

that Congress has sought to foster. This power, as well as the requirement in this case that the Fund divert its assets from the purposes agreed upon by the parties to a state purpose, demonstrates the challenged legislation's conflict with Congressional intent.

Therefore, the challenged legislation should not be permitted to stand.

CONCLUSION.

The petition for writ of certiorari should be granted.

Respectfully submitted,

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